RAJA NONG CHIK v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) July 7, 1970]

[Kuala Lumpur — Criminal Appeal No. 41 of 1970]

Companies — Directors — Commercial morality expected of company directors — Dealings with company shares — Companies Act, 1965, ss. 134 and 135.

The appellant in this case was charged and convicted by the President of the Sessions Court, for non compliance with section 135 of the Companies Act, 1965. Section 135 imposes a general duty to make disclosure:

(1) "Every director shall give such notice to the company of such events and matters relating to himself as may be necessary or expedient to enable the company or its officers to comply with the requirements of this Act." (2) "Any such notice shall be in writing and shall be given within seven days of the occurrence of the event or of the matter becoming relevant and, if it is not given at a meeting of the directors, the director giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given. Penalty: Imprisonment for one year or two thousand five hundred dollars." (3) "Any person who is for the time being beneficially entitled to 5% or more of the issued equity shares of a company shall for the purposes of this section and section 134 and notwithstanding any provision of this Act to the contrary, be deemed to be a director and the provisions of this section and section 134 shall with such adaptations as are necessary extend and apply accordingly."

Held: the commercial morality expected of company directors is too well-known to be reiterated. Directors are expected to observe a high standard of conduct in connection with dealings with their own shares. They may buy or sell shares in the company in the ordinary course and the fact that they usually know more about their company than the other party to the transaction is no bar; but when they do buy or transfer shares, they have to notify the company in writing within seven days of the occurrence.

MAGISTRATE'S CRIMINAL APPEAL.

Raja Abdul Aziz bin Raja Addruse (*D. S. Nath* with him) for the appellant.

Ajaib Singh (Deputy Public Prosecutor) for the respondent.

Raja Azlan Shah J. (delivering oral judgment): The commercial morality expected of company directors is too well-known to be reiterated. Directors are expected to observe a high standard of conduct in connection with dealings with their own shares. They may buy or sell shares in the company in the ordinary course and the fact that they usually know more about their company than the other party to the transaction is no bar; but when they do buy or transfer shares, they have to notify the company in writing within seven days of the occurrence. Recognition of this requirement is given statutory recognition by section 135 of the Companies Act, 1965.

In the present case there were resolutions passed by the board of directors with regard to the acquisition and transfer of shares. The company therefore knew of the occurrence of this event. In my view section 134 is directed against directors who bought or transferred shares without the knowledge of the company. Without such knowledge the company would not be in a position to fulfil the requirement of section 134.

Even though the appellant had pleaded guilty to the charge it is the bounden duty of the prosecution to acquaint the court with the full facts so that in an appeal such as the present, the appeal court will be in a position to consider the matter. In the present case not only were the facts not fully presented but it is unfortunate that the learned president took extraneous things into consideration. Had the lower court known about the facts regarding the acquisitions and transfers, he might have taken a different view in assessing sentence. For these reasons I take the view that the sentence imposed by the learned president was excessive. I will reduce the fine to a sum of $1,000 or 6 months' imprisonment in default.

Sentence varied.

Solicitors: *Rithauddeen & Aziz.*

CHOW YOKE PUI v. TAN TUAN BOON & ORS.

[O.C.J. (Sharma J.) August 28, 1970]

[Malacca — Civil Suit No. 61 of 1969]

Partnership — Dissolution — Valuation of shares — Appointment of adjudicator — Whether adjudicator a valuer or arbitrator — Validity of award — Whether award final.

The plaintiff had withdrawn from a partnership agreement with the first defendant and one other, and the first defendant had agreed to purchase the plaintiff's share. It was necessary to value the plaintiff's share in the partnership business and it was agreed between the plaintiff and the first defendant to appoint Messrs. Evatt & Co. to be valuers of the plaintiff's share and to appoint one Koh Kim Leng to be the "adjudicator to adjudicate upon the valuation and report of Evatt & Co. after considering the comments and representations of the parties and he may in his absolute discretion summon before him either collectively or separately the parties thereto to resolve any difficulties which may appear from the comments and representations made by the parties." Messrs. Evatt & Co. duly made their valuation and the adjudicator made his award. Thereupon the plaintiff asked the first defendant for payment of the award. The first defendant alleged that the adjudicator had made no award as required by the agreement. The plaintiff brought an action against the defendants and the following issues were agreed to be tried as preliminary issues:

(1) Whether Koh Kim Leng was a valuer or an arbitrator?

(2) Was the award made or purported to be made by Koh Kim Leng final?

(3) Are the defendants estopped from challenging the validity of the award made by Koh Kim Leng?

The second defendant had given a bank guarantee whereby it had agreed on behalf of the first defendant the payment of the purchase price of the plaintiff's share in the manner provided by the partnership agreement.

Held: (1) in the circumstances of this case as Koh Kim Leng was not required to hold any judicial inquiry the intention of the parties was to appoint him as valuer and not as arbitrator;

(2) there was no allegation of any dishonest intention on the part of the adjudicator and there was no evidence on which it could be held that the valuation given by the adjudicator was not *bona fide* and that he did not take into consideration matters which he should have. In the circumstances therefore the award made by the adjudicator was final;

(3) in this case no plea of *estoppel* had been raised by the plaintiff against the defendants and the defendants cannot